

# **EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
Southern District of New York**

-----  
SECURITIES INVESTOR PROTECTION  
CORPORATION,

Adv. Pro. No. 08-01789 (BRL)

Plaintiff-Applicant,

SIPA LIQUIDATION

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

(Substantively Consolidated)

Defendant.  
-----

In re:

BERNARD L. MADOFF,

Case No. 09-11893 (BRL)

Debtor.  
-----

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Adv. Pro. No. 10-05371 (BRL)

Plaintiff,

v.

L. H. RICH COMPANIES, N. R. INVESTMENT  
ASSOCIATES, M. R. INVESTMENT  
ASSOCIATES, JACK POLACK, and JAMES  
POLACK,

Defendants.  
-----

**SUMMONS AND NOTICE OF PRETRIAL CONFERENCE  
IN AN ADVERSARY PROCEEDING**

YOU ARE SUMMONED and required to submit a motion or answer to the complaint which is attached to this summons to the clerk of the bankruptcy court within 60 days after the date of issuance of this summons pursuant to an Order of the Bankruptcy Court dated November 10, 2010 (the "Procedures Order") and the Notice of Applicability filed in this adversary proceeding (each of which are enclosed herewith).

<b>Address of Clerk:</b>	<b>Clerk of the Court United States Bankruptcy Court Southern District of New York One Bowling Green New York, NY 10004-1408</b>
--------------------------	--

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

<b>Name and Address of Plaintiff's Attorney:</b>	<b>David J. Sheehan Marc E. Hirschfield Baker &amp; Hostetler LLP 45 Rockefeller Plaza New York, NY 10111</b>
--	---

If you make a motion, your time to answer is governed by Bankruptcy Rule 7012 and the Procedures Order.

YOU ARE NOTIFIED that a pretrial conference of the proceeding commenced by the filing of the complaint will be held at the following time and place:

United States Bankruptcy Court Southern District of New York One Bowling Green New York, NY 10004-1408	Room: Courtroom 623 (BRL), One Bowling Green, New York, NY 10004-1408  Date and Time: <b>To Be Determined By The Court</b>
---	---

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR  
CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY  
DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

Dated: March 11, 2011

Vito Genna

---

*Clerk of the Court*

By: /s/ Humberto Cales

---

*Deputy Clerk*

**Baker & Hostetler LLP**

45 Rockefeller Plaza

New York, NY 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

David J. Sheehan

Marc E. Hirschfield

Richard J. Bernard

Geraldine E. Ponto

Marc Skapof

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

L. H. RICH COMPANIES, N. R. INVESTMENT  
ASSOCIATES, M. R. INVESTMENT  
ASSOCIATES, JACK POLACK, and JAMES  
POLACK,

Defendants.

Adv. Pro. No. 10- ~~05371~~ (BRL)

## **COMPLAINT**

Irving H. Picard (the “Trustee”), as Trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”).<sup>1</sup> and the substantively consolidated estate of Bernard L. Madoff individually (“Madoff”), by and through his undersigned counsel, for his complaint (the “Complaint”), states as follows:

### **NATURE OF PROCEEDING**

1. This adversary proceeding arises from the massive Ponzi scheme perpetrated by Madoff. Over the course of the scheme, there were more than 8,000 client accounts at BLMIS. In early December 2008, BLMIS generated client account statements for its approximately 4,900 open client accounts. When added together, these statements purport that clients of BLMIS had approximately \$65 billion invested with BLMIS. In reality, BLMIS had assets on hand worth a small fraction of that amount. On March 12, 2009, Madoff admitted to the fraudulent scheme and pled guilty to 11 felony counts, and was sentenced on June 29, 2009 to 150 years in prison. The within defendants L.H. Rich Companies, N.R. Investment Associates, and M.R. Investment Associates (collectively “Defendants”), received avoidable transfers from BLMIS.

2. Defendants were beneficiaries of this Ponzi scheme. Since December 11, 2002, Defendants received the amount of \$5,550,000 from BLMIS. The Trustee’s investigation has revealed that \$4,050,000 of this amount represented fictitious profits from the Ponzi scheme. Accordingly, Defendants have received \$4,050,000 of other people’s money. Upon information and belief, the within defendants Jack Polack and James Polack (“Subsequent Transferee Defendants”) received subsequent transfers of the avoidable transfers referenced above. To the extent the funds transferred from BLMIS were for the benefit of the Subsequent Transferee

Defendants, Subsequent Transferee Defendants are the initial transferees of such transfers and are included in the definition of Defendants for purposes of the allegations herein. This action is brought to recover the fictitious profit amount so that this customer property can be equitably distributed among all of the victims of BLMIS.

3. This adversary proceeding is brought pursuant to sections 78fff(b), 78fff-1(a) and 78fff-2(c)(3) of SIPA, sections 105(a), 544, 548(a), 550(a) and 551 of title 11 of the United States Code (the “Bankruptcy Code”), the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law § 270 *et seq.* (McKinney 2001) (“DCL”)) and other applicable law, for avoidance of fraudulent conveyances in connection with certain transfers of property by BLMIS to or for the benefit of Defendants. The Trustee seeks to set aside such transfers and preserve and recover the property for the benefit of BLMIS’ defrauded customers.

#### **JURISDICTION AND VENUE**

4. This is an adversary proceeding commenced before the same Court before whom the main underlying SIPA proceeding, No. 08-01789 (BRL) (the “SIPA Proceeding”), is pending. The SIPA Proceeding was originally brought in the United States District Court for the Southern District of New York as *Securities Exchange Commission v. Bernard L. Madoff Investment Securities LLC et al.*, No. 08 CV 10791 (the “District Court Proceeding”) and has been referred to this Court. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and 15 U.S.C. §§ 78eee(b)(2)(A) and (b)(4).

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (H) and (O).

6. Venue in this district is proper under 28 U.S.C. § 1409.

---

<sup>1</sup> For convenience, future reference to SIPA will not include “15 U.S.C.”

**DEFENDANTS**

7. Defendant L.H. Rich Companies is a general partnership that was, upon information and belief, formed under the laws of the state of Illinois. Its principal place of business is located at 1515 Fifth Avenue, Suite 104, Moline, Illinois 61265. Defendant holds a BLMIS account in the name, "L.H. Rich Companies," with the account address reported as 1515 Fifth Avenue, Suite 104, Moline, Illinois 61265,

8. Upon information and belief, Defendant N.R. Investment Associates is a general partnership that maintains its principal place of business at 1515 Fifth Avenue, Suite 104, Moline, Illinois 61265 and a general partner of Defendant L.H. Rich Companies.

9. Upon information and belief, Defendant M.R. Investment Associates is a general partnership that maintains its principal place of business at 1515 Fifth Avenue, Suite 104, Moline, Illinois 61265 and a general partner of Defendant L.H. Rich Companies.

10. Upon information and belief, Subsequent Transferee Defendant Jack Polack is an individual who is the general partner and trustee of N.R. Investment Associates.

11. Upon information and belief, Subsequent Transferee Defendant James Polack is an individual who is the general partner and trustee of M.R. Investment Associates.

**BACKGROUND, THE TRUSTEE AND STANDING**

12. On December 11, 2008 (the "Filing Date"),<sup>2</sup> Madoff was arrested by federal agents for violation of the criminal securities laws, including, *inter alia*, securities fraud, investment adviser fraud, and mail and wire fraud. Contemporaneously, the Securities and

---

<sup>2</sup> Section 78i(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." 15 U.S.C. § 78i(7)(B). Thus, even though the application for a protective decree was filed on December 15, 2008, the Filing Date in this action is December 11, 2008.

Exchange Commission (“SEC”) filed a complaint in the District Court which commenced the District Court Proceeding against Madoff and BLMIS. The District Court Proceeding remains pending in the District Court. The SEC complaint alleged that Madoff and BLMIS engaged in fraud through the investment advisor activities of BLMIS.

13. On December 12, 2008, The Honorable Louis L. Stanton of the District Court entered an order appointing Lee S. Richards, Esq. (the “Receiver”) as receiver for the assets of BLMIS.

14. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with an application of the Securities Investor Protection Corporation (“SIPC”). Thereafter, pursuant to section 78eee(a)(4)(B) of SIPA, SIPC filed an application in the District Court alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA.

15. Also on December 15, 2008, Judge Stanton granted the SIPC application and entered an order pursuant to SIPA (the “Protective Decree”), which, in pertinent part:

a. appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA;

b. appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and

c. removed the case to this Court pursuant to section 78eee(b)(4) of SIPA.

By this Protective Decree, the Receiver was removed as Receiver for BLMIS.

16. By orders dated December 23, 2008 and February 4, 2009, respectively, the Bankruptcy Court approved the Trustee’s bond and found that the Trustee was a disinterested



person. Accordingly, the Trustee is duly qualified to serve and act on behalf of the estate of BLMIS.

17. At a Plea Hearing on March 12, 2009 in the case captioned *United States v. Madoff*, Case No. 09-CR-213(DC), Madoff pled guilty to an eleven-count criminal information filed against him by the United States Attorneys' Office for the Southern District of New York. At the Plea Hearing, Madoff admitted that he "operated a Ponzi scheme through the investment advisory side of [BLMIS]." Plea Allocution of Bernard L. Madoff at 23, *United States v. Madoff*, No. 09-CR-213 (DC) (S.D.N.Y. March 12, 2009) (Docket No. 50). Additionally, Madoff asserted "[a]s I engaged in my fraud, I knew what I was doing [was] wrong, indeed criminal." *Id.* Madoff was sentenced on June 29, 2009 to 150 years in prison.

18. On August 11, 2009, a former BLMIS employee, Frank DiPascali, pled guilty to participating in and conspiring to perpetuate the Ponzi scheme. At a Plea Hearing on August 11, 2009 in the case entitled *United States v. DiPascali*, Case No. 09-CR-764 (RJS), DiPascali pled guilty to a ten-count criminal information. Among other things, DiPascali admitted that the fictitious scheme had begun at BLMIS since at least the 1980s. Plea Allocution of Frank DiPascali at 46, *United States v. DiPascali*, No. 09-CR-764 (RJS) (S.D.N.Y. Aug. 11, 2009) (Docket No. 11).

19. As the Trustee appointed under SIPA, the Trustee is charged with recovering and paying out customer property to BLMIS' customers, assessing claims, and liquidating any other assets of the firm for the benefit of the estate and its creditors. The Trustee is in the process of marshalling BLMIS' assets, and the liquidation of BLMIS' assets is well underway. However, such assets will not be sufficient to reimburse the customers of BLMIS for the billions of dollars that they invested with BLMIS over the years. Consequently, the Trustee must use his authority

under SIPA and the Bankruptcy Code to pursue recovery from customers who received preferences and/or payouts of fictitious profits to the detriment of other defrauded customers whose money was consumed by the Ponzi scheme. Absent this or other recovery actions, the Trustee will be unable to satisfy the claims described in subparagraphs (A) through (D) of SIPA section 78fff-2(c)(1).

20. Pursuant to section 78fff-1(a), the Trustee has the general powers of a bankruptcy trustee in a case under the Bankruptcy Code in addition to the powers granted by SIPA pursuant to SIPA section 78fff(b). Chapters 1, 3, 5 and subchapters I and II of chapter 7 of the Bankruptcy Code apply to this proceeding to the extent consistent with SIPA.

21. Pursuant to sections 78fff(b) and 78lll(7)(B) of SIPA, the Filing Date is deemed to be the date of the filing of the petition within the meaning of section 548 of the Bankruptcy Code and the date of the commencement of the case within the meaning of section 544 of the Bankruptcy Code.

22. The Trustee has standing to bring these claims pursuant to section 78fff-1(a) of SIPA and the Bankruptcy Code, including sections 323(b) and 704(a)(1), because, among other reasons:

- a. Defendants received "Customer Property" as defined in 15 U.S.C. §78lll(4);
- b. BLMIS incurred losses as a result of the claims set forth herein;
- c. BLMIS' customers were injured as a result of the conduct detailed herein;
- d. SIPC has not reimbursed, and statutorily cannot fully reimburse, all customers for all of their losses;
- e. the Trustee will not be able to fully satisfy all claims;

f. the Trustee, as bailee of customer property, can sue on behalf of the customer bailors;

g. the Trustee is the assignee of claims paid, and to be paid, to customers of BLMIS who have filed claims in the liquidation proceeding (such claim-filing customers, collectively, "Accountholders"). As of the date hereof, the Trustee has received multiple express unconditional assignments of the applicable Accountholders' causes of action, which actions could have been asserted against Defendants and Subsequent Transferee Defendants. As assignee, the Trustee stands in the shoes of persons who have suffered injury in fact and a distinct and palpable loss for which the Trustee is entitled to reimbursement in the form of monetary damages. The Trustee brings this action on behalf of, among others, those defrauded customers of BLMIS who invested more money in BLMIS than they withdrew; and

h. SIPC is the subrogee of claims paid, and to be paid, to customers of BLMIS who have filed claims in the liquidation proceeding. SIPC has expressly conferred upon the Trustee enforcement of its rights of subrogation with respect to payments it has made and is making to customers of BLMIS from SIPC funds.

### **THE FRAUDULENT PONZI SCHEME**

23. Founded in 1959, BLMIS began operations as a sole proprietorship of Madoff and later, effective January 2001, formed as a New York limited liability company wholly owned by Madoff. Since in or about 1986, BLMIS operated from its principal place of business at 885 Third Avenue, New York, New York. Madoff, as founder, proprietor, chairman, and chief executive officer, ran BLMIS together with several family members and a number of additional employees. BLMIS was registered with the SEC as a securities broker-dealer under section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b). By that registration, BLMIS

is a member of SIPC. BLMIS had three business units: investment advisory (the “IA Business”), market making and proprietary trading.

24. For certain accounts in the IA Business, BLMIS purported to participate in a capital appreciation/depreciation strategy, depending on whether the customer sought to generate gains or losses. For example, the strategy was executed by either purporting to purchase small groups of securities near lows and then purporting to sell those same securities at highs, or by purporting to short-sell securities near highs and then purporting to repurchase those securities near lows.

25. For other accounts, Madoff described the IA Business’ strategy as a “split-strike conversion” strategy. Madoff promised these clients that their funds would be invested in a basket of common stocks within the S&P 100 Index, which is a collection of the 100 largest U.S. publicly traded companies. The basket of stocks would be intended to mimic the movement of the S&P 100 Index. Madoff asserted that he would carefully time purchases and sales to maximize value, but this meant that the clients’ funds would intermittently be out of the market, at which times they would purportedly be invested in U.S. issued securities and money market funds. The second part of the split-strike conversion strategy was the hedge of such purchases with option contracts. Madoff purported to purchase and sell S&P 100 Index option contracts that closely corresponded with the stocks in the basket, thereby controlling the downside risk of price changes in the basket of stocks.

26. Although clients of the IA Business received monthly or quarterly statements purportedly showing the securities that were held in -- or had been traded through -- their accounts, as well as the growth of and profit from those accounts over time, the trades reported on these statements were a complete fabrication. The security purchases and sales depicted in

the account statements virtually never occurred and the profits reported were entirely fictitious. At his Plea Hearing, Madoff admitted that he never in fact purchased any of the securities he claimed to have purchased for customer accounts. *See* Plea Allocation of Bernard L. Madoff at 3, *United States v. Madoff*, No. 09-CR-213 (DC) (S.D.N.Y. March 12, 2009) (Docket No. 50). Indeed, based on the Trustee's investigation to date and with the exception of isolated individual trades for certain parties other than Defendants, there is no record of BLMIS having cleared any purchase or sale of securities on behalf of the IA Business at the Depository Trust & Clearing Corporation, the clearing house for such transactions.

27. Prior to his arrest, Madoff assured clients and regulators that he conducted all trades on the over-the-counter market after hours. To bolster that lie, Madoff periodically wired tens of millions of dollars to BLMIS' affiliate, Madoff Securities International Ltd. ("MSIL"), a London based entity substantially owned by Madoff and his family. There are no records that MSIL ever used the wired funds to purchase securities for the accounts of the IA Business clients.

28. Additionally, based on the Trustee's investigation to date, there is no evidence that BLMIS ever purchased or sold any of the options that Madoff claimed on customer statements to have purchased and sold.

29. For all periods relevant hereto, the IA Business was operated as a Ponzi scheme and Madoff and his co-conspirators concealed the ongoing fraud in an effort to hinder, delay or defraud other current and prospective customers of BLMIS. The money received from investors was not set aside to buy securities as purported, but instead was primarily used to make the distributions to – or payments on behalf of – other investors. The money sent to BLMIS for investment, in short, was simply used to keep the scheme going and to enrich Madoff, his

associates and others, including Defendants, until such time as the requests for redemptions in December 2008 overwhelmed the flow of new investments and caused the inevitable collapse of the Ponzi scheme.

30. The payments to investors constituted an intentional misrepresentation of fact regarding the underlying accounts and were an integral and essential part of the fraud. The payments were necessary to validate the false account statements, and were made to avoid detection of the fraud, to retain existing investors and to lure other investors into the Ponzi scheme.

31. During the scheme, certain investors requested and received distributions of the so-called "profits" listed for their accounts which were nothing more than fictitious profits. Other investors, from time to time, redeemed or closed their accounts, or removed portions of purportedly available funds, and were paid consistently with the statements they had been receiving. Some of those investors later re-invested part or all of those withdrawn payments with BLMIS.

32. When payments were made to or on behalf of these investors, including Defendants, the falsified monthly statements of accounts reported that the accounts of such investors included substantial gains. In reality, BLMIS had not invested the investors' principal as reflected in customer statements. In an attempt to conceal the ongoing fraud and thereby hinder, delay or defraud other current and prospective investors, BLMIS paid to or on behalf of certain investors the inflated amounts reflected in the falsified financial statements, including principal and/or fictitious profits.

33. BLMIS used the funds deposited from new investments to continue operations and pay redemption proceeds to or on behalf of other investors and to make other transfers. Due

to the siphoning and diversion of new investments to fund redemptions requested by other investors, BLMIS did not have the funds to pay investors on account of their new investments. BLMIS was able to stay afloat only by using the principal invested by some clients to pay other investors or their designees.

34. In an effort to hinder, delay or defraud authorities from detecting the fraud, BLMIS did not register as an Investment Advisor until September 2006.

35. In or about January 2008, BLMIS filed with the SEC a Uniform Application for Investment Adviser Registration. The application represented, *inter alia*, that BLMIS had 23 customer accounts and assets under management of approximately \$17.1 billion. In fact, in January 2008, BLMIS had approximately 4,900 active client accounts with a purported value of approximately \$65 billion under management.

36. Not only did Madoff seek to evade regulators, Madoff also had false audit reports "prepared" by Friehling & Horowitz, a three-person accounting firm in Rockland County, New York. Of the two accountants at the firm, one was semi-retired and living in Florida for many years prior to the Filing Date.

37. At all times relevant hereto, the liabilities of BLMIS were billions of dollars greater than the assets of BLMIS. At all relevant times, BLMIS was insolvent in that (i) its assets were worth less than the value of its liabilities; (ii) it could not meet its obligations as they came due; and (iii) at the time of the transfers, BLMIS was left with insufficient capital.

### **THE TRANSFERS**

38. According to BLMIS' records, an account (No. 1ZB250) was maintained with BLMIS, as set forth on Exhibit A (the "Account"). Upon information and belief, for the Account, a Customer Agreement, an Option Agreement, and/or a Trading Authorization Limited to Purchases and Sales of Securities and Options (collectively, the "Account Agreements") were

executed and delivered to BLMIS at BLMIS' headquarters at 885 Third Avenue, New York, New York.

39. The Account Agreements were to be performed in New York, New York through securities trading activities that would take place in New York, New York. The Account was held in New York, New York, and funds were sent to BLMIS and/or to BLMIS' account at JPMorgan Chase & Co., Account #xxxxxxxxxx1703 (the "BLMIS Bank Account") in New York, New York for application to the Account and the purported conducting of trading activities. Between the date the Account was opened and the Filing Date, deposits for application to the Account were made to BLMIS through checks and/or wire transfers into the BLMIS Bank Account and/or received inter-account transfers from other BLMIS accounts.

40. During the six years prior to the Filing Date, BLMIS made transfers (collectively, the "Transfers") to Defendants totaling \$4,050,000 in fictitious profits from the Ponzi scheme. The Transfers received by Defendants constitute non-existent profits supposedly earned in the Account, but, in reality, they were other people's money. The Transfers were made to or for the benefit of Defendants and are set forth in Columns 10 and 11 on Exhibit B annexed hereto.

41. The Transfers that are avoidable and recoverable under sections 544(b), 550(a)(1) and 551 of the Bankruptcy Code, applicable provisions of SIPA, particularly SIPA section 78fff-2(c)(3), and applicable provisions of N.Y. CPLR 203(g) (McKinney 2001) and DCL sections 273 – 279 (McKinney 2001) total \$4,050,000 and are referred to hereafter as the "Six Year Transfers." See Exhibit B, Column 11. The Transfers that are avoidable and recoverable under sections 548(a), 550(a)(1) and 551 of the Bankruptcy Code and applicable provisions of SIPA, particularly SIPA section 78fff-2(c)(3), total \$1,800,000 and are referred to hereafter as the "Two Year Transfers." See Exhibit B, Column 10.



42. On information and belief, some or all of the Transfers were subsequently transferred by Defendants to Subsequent Transferee Defendants (collectively, the “Subsequent Transfers”).

43. The Subsequent Transfers, or the value thereof, are recoverable from Subsequent Transferee Defendants pursuant to §550(a) of the Bankruptcy Code.

44. The Trustee’s investigation is ongoing and the Trustee reserves the right to (i) supplement the information regarding the Transfers, Subsequent Transfers and any additional transfers and (ii) seek recovery of such additional transfers.

45. To the extent that any of the avoidance and/or recovery counts may be inconsistent with each other, they are to be treated as being pled in the alternative.

**COUNT ONE**  
**FRAUDULENT TRANSFER – 11 U.S.C. §§ 548(a)(1)(A), 550(a) AND 551**

46. To the extent applicable, the Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

47. Each of the Two Year Transfers was made on or within two years before the Filing Date.

48. Each of the Two Year Transfers constituted a transfer of an interest of BLMIS in property within the meaning of section 101(54) of the Bankruptcy Code and pursuant to section 78fff-2(c)(3) of SIPA.

49. Each of the Two Year Transfers was made by BLMIS with the actual intent to hinder, delay or defraud some or all of BLMIS’ then existing and/or future creditors.

50. Each of the Two Year Transfers constitutes a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(1)(A) of the Bankruptcy Code and recoverable from Defendants pursuant to section 550(a) of the Bankruptcy Code and section 78fff-2(c)(3) of SIPA.

51. As a result of the foregoing, pursuant to sections 548(a)(1)(A), 550(a), and 551 of the Bankruptcy Code and section 78fff-2(c)(3) of SIPA, the Trustee is entitled to a judgment against Defendants: (a) avoiding and preserving the Two Year Transfers, (b) directing that the Two Year Transfers be set aside, and (c) recovering the Two Year Transfers, or the value thereof, from Defendants for the benefit of the estate of BLMIS.

**COUNT TWO**  
**FRAUDULENT TRANSFER – 11 U.S.C. §§ 548(a)(1)(B), 550(a) AND 551**

52. To the extent applicable, the Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

53. Each of the Two Year Transfers was made on or within two years before the Filing Date.

54. Each of the Two Year Transfers constituted a transfer of an interest of BLMIS in property within the meaning of section 101(54) of the Bankruptcy Code and pursuant to section 78fff-2(c)(3) of SIPA.

55. BLMIS received less than reasonably equivalent value in exchange for each of the Two Year Transfers.

56. At the time of each of the Two Year Transfers, BLMIS was insolvent, or became insolvent as a result of the Two Year Transfers.

57. At the time of each of the Two Year Transfers, BLMIS was engaged in a business or a transaction, or was about to engage in a business or transaction, for which any property remaining with BLMIS was an unreasonably small capital.

58. At the time BLMIS made each of the Two Year Transfers, BLMIS had incurred, was intending to incur, or believed that it would incur debts beyond its ability to pay them as the debts matured.

59. Each of the Two Year Transfers constitutes a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(1)(B) of the Bankruptcy Code and recoverable from the Defendants pursuant to section 550(a) of the Bankruptcy Code and section 78fff-2(c)(3) of SIPA.

60. As a result of the foregoing, pursuant to sections 548(a)(1)(B), 550(a), and 551 of the Bankruptcy Code and section 78fff-2(c)(3) of SIPA, the Trustee is entitled to a judgment against Defendants: (a) avoiding and preserving the Two Year Transfers, (b) directing that the Two Year Transfers be set aside, and (c) recovering the Two Year Transfers, or the value thereof, from Defendants for the benefit of the estate of BLMIS.

**COUNT THREE**  
**FRAUDULENT TRANSFER – NEW YORK DEBTOR AND CREDITOR LAW §§ 276,**  
**278 AND/OR 279, AND 11 U.S.C. §§ 544(b), 550(a) AND 551**

61. To the extent applicable, the Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

62. At all times relevant to the Six Year Transfers, there have been and are one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e) of the Bankruptcy Code.

63. Each of the Six Year Transfers constituted a conveyance by BLMIS as defined under DCL section 270.

64. Each of the Six Year Transfers was made by BLMIS with the actual intent to hinder, delay or defraud the creditors of BLMIS. BLMIS made each of the Six Year Transfers to or for the benefit of Defendants in furtherance of a fraudulent investment scheme.

65. As a result of the foregoing, pursuant to DCL sections 276, 278 and/or 279, sections 544(b), 550(a) and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA, the Trustee is entitled to a judgment against Defendants: (a) avoiding and preserving the Six Year

Transfers, (b) directing that the Six Year Transfers be set aside, and (c) recovering the Six Year Transfers, or the value thereof, from Defendants for the benefit of the estate of BLMIS.

**COUNT FOUR**  
**FRAUDULENT TRANSFER – NEW YORK DEBTOR AND CREDITOR LAW §§ 273,**  
**278 AND/OR 279, AND 11 U.S.C. §§ 544(b), 550(a) AND 551**

66. To the extent applicable, the Trustee incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

67. At all times relevant to the Six Year Transfers, there have been and are one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e) of the Bankruptcy Code.

68. Each of the Six Year Transfers constituted a conveyance by BLMIS as defined under DCL section 270.

69. BLMIS did not receive fair consideration for any of the Six Year Transfers.

70. BLMIS was insolvent, or became insolvent as a result of the Six Year Transfers.

71. As a result of the foregoing, pursuant to DCL sections 273, 278 and/or 279, sections 544(b), 550(a) and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA, the Trustee is entitled to a judgment against Defendants: (a) avoiding and preserving the Six Year Transfers, (b) directing that the Six Year Transfers be set aside, and (c) recovering the Six Year Transfers, or the value thereof, from Defendants for the benefit of the estate of BLMIS.

**COUNT FIVE**  
**FRAUDULENT TRANSFER – NEW YORK DEBTOR AND CREDITOR LAW §§ 274,**  
**278 AND/OR 279, AND 11 U.S.C. §§ 544(b), 550(a), AND 551**

72. To the extent applicable, the Trustee incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

73. At all times relevant to the Six Year Transfers, there have been and are one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e) of the Bankruptcy Code.

74. Each of the Six Year Transfers constituted a conveyance by BLMIS as defined under DCL section 270.

75. BLMIS did not receive fair consideration for any of the Six Year Transfers.

76. At the time BLMIS made each of the Six Year Transfers, BLMIS was engaged or was about to engage in a business or transaction for which the property remaining in its hands after each of the Six Year Transfers was an unreasonably small capital.

77. As a result of the foregoing, pursuant to DCL sections 274, 278 and/or 279, sections 544(b), 550(a) and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA, the Trustee is entitled to a judgment against Defendants: (a) avoiding and preserving the Six Year Transfers, (b) directing that the Six Year Transfers be set aside, and (c) recovering the Six Year Transfers, or the value thereof, from Defendants for the benefit of the estate of BLMIS.

**COUNT SIX**  
**FRAUDULENT TRANSFER – NEW YORK DEBTOR AND CREDITOR LAW §§ 275,**  
**278 AND/OR 279, AND 11 U.S.C. §§ 544(b), 550(a), AND 551**

78. To the extent applicable, the Trustee incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

79. At all times relevant to the Six Year Transfers, there have been and are one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e) of the Bankruptcy Code.

80. Each of the Six Year Transfers constituted a conveyance by BLMIS as defined under DCL section 270.

81. BLMIS did not receive fair consideration for any of the Six Year Transfers.

82. At the time BLMIS made each of the Six Year Transfers, BLMIS had incurred, was intending to incur, or believed that it would incur debts beyond its ability to pay them as the debts matured.

83. As a result of the foregoing, pursuant to DCL sections 275, 278 and/or 279 and sections 544(b), 550(a) and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA, the Trustee is entitled to a judgment against Defendants: (a) avoiding and preserving the Six Year Transfers, (b) directing that the Six Year Transfers be set aside, and (c) recovering the Six Year Transfers, or the value thereof, from Defendants for the benefit of the estate of BLMIS.

**COUNT SEVEN**  
**RECOVERY OF SUBSEQUENT TRANSFER – NEW YORK DEBTOR AND**  
**CREDITOR LAW §§ 278 AND/OR 279 AND 11 U.S.C. §§ 544, 548, 550(a) AND 551**

84. To the extent applicable, the Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

85. Each of the Transfers is avoidable under sections 544 and 548 of the Bankruptcy Code, DCL sections 273, 274, 275 and/or 276 and section 78fff-2(c)(3) of SIPA.

86. On information and belief, the Subsequent Transfers were transferred by Defendants to Subsequent Transferee Defendants.

87. Each of the Subsequent Transfers was made directly or indirectly to Subsequent Transferee Defendants.

88. Subsequent Transferee Defendants are immediate or mediate transferees of the Subsequent Transfers from Defendants.

89. As a result of the foregoing and the avoidance of the within Transfers, pursuant to DCL sections 278 and/or 279, sections 544(b), 548(a), 550(a) and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA, the Trustee is entitled to a judgment against Subsequent Transferee Defendants: (a) avoiding and preserving the Subsequent Transfers, (b) directing that the Subsequent Transfers be set aside, and (c) recovering the Subsequent Transfers, or the value thereof, from Subsequent Transferee Defendants for the benefit of the estate of BLMIS.

WHEREFORE, the Trustee respectfully requests that this Court enter judgment in favor of the Trustee and against Defendants as follows:

i. On the First Claim for Relief, pursuant to sections 548(a)(1)(A), 550(a) and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA: (a) avoiding and preserving the Two Year Transfers, (b) directing that the Two Year Transfers be set aside, and (c) recovering the Two Year Transfers, or the value thereof, from Defendants for the benefit of the estate of BLMIS;

ii. On the Second Claim for Relief, pursuant to sections 548(a)(1)(B), 550(a) and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA: (a) avoiding and preserving the Two Year Transfers, (b) directing that the Two Year Transfers be set aside, and (c) recovering the Two Year Transfers, or the value thereof, from Defendants for the benefit of the estate of BLMIS;

iii. On the Third Claim for Relief, pursuant to DCL sections 276, 278 and/or 279, sections 544(b), 550(a) and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA: (a) avoiding and preserving the Six Year Transfers, (b) directing that the Six Year Transfers be set aside, and (c) recovering the Six Year Transfers, or the value thereof, from Defendants for the benefit of the estate of BLMIS;

iv. On the Fourth Claim for Relief, pursuant to DCL sections 273, 278 and/or 279, sections 544(b), 550(a) and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA: (a) avoiding and preserving the Six Year Transfers, (b) directing that the Six Year Transfers be set aside, and (c) recovering the Six Year Transfers, or the value thereof, from Defendants for the benefit of the estate of BLMIS;

v. On the Fifth Claim for Relief, pursuant to DCL sections 274, 278 and/or 279, sections 544(b), 550(a), and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA: (a) avoiding and preserving the Six Year Transfers, (b) directing the Six Year Transfers be set aside, and (c) recovering the Six Year Transfers, or the value thereof, from Defendants for the benefit of the estate of BLMIS;

vi. On the Sixth Claim for Relief, pursuant to DCL sections 275, 278 and/or 279, sections 544(b), 550(a) and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA: (a) avoiding and preserving the Six Year Transfers, (b) directing that the Six Year Transfers be set aside, and (c) recovering the Six Year Transfers, or the value thereof, from Defendants for the benefit of the estate of BLMIS;

vii. On the Seventh Claim for Relief as a result of the avoidance of the within Transfers, pursuant to DCL section 278 and/or 279, sections 544(b), 548, 550(a) and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA: (a) avoiding and preserving the Subsequent Transfers, (b) directing that the Subsequent Transfers be set aside, and (c) recovering the Subsequent Transfers, or the value thereof, from Subsequent Transferee Defendants for the benefit of the estate of BLMIS;



viii. On all Claims for Relief, pursuant to federal common law and N.Y. CPLR 5001 and 5004 awarding the Trustee prejudgment interest from the date on which the Transfers were received;

ix. On all Claims for Relief, establishment of a constructive trust over the proceeds of the Transfers in favor of the Trustee for the benefit of BLMIS' estate;

x. On all Claims for Relief, assignment of Defendants' income tax refunds from the United States, state and local governments paid on fictitious profits during the course of the scheme;

SPACE INTENTIONALLY BLANK

xi. On all Claims for Relief, awarding the Trustee all applicable interest, costs, and disbursements of this action; and

xii. On all Claims for Relief, granting Plaintiff such other, further, and different relief as the Court deems just, proper and equitable.

Date: November 12, 2010  
New York, New York

Of Counsel:

**BAKER & HOSTETLER LLP**  
200 S. Orange Avenue  
SunTrust Center, Suite 2300  
Orlando, FL 32801  
Telephone: (407) 649-4000  
Facsimile: (407) 841-0168  
Matthew P. Julian  
[mjulian@bakerlaw.com](mailto:mjulian@bakerlaw.com)

By: /s/ Marc E. Hirschfield  
/s/ Richard J. Bernard  
/s/ Geraldine E. Ponto  
/s/ Marc Skapof

**BAKER & HOSTETLER LLP**  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)  
Marc E. Hirschfield  
Email: [mhirschfield@bakerlaw.com](mailto:mhirschfield@bakerlaw.com)  
Richard J. Bernard  
Email: [rbernard@bakerlaw.com](mailto:rbernard@bakerlaw.com)  
Geraldine E. Ponto  
Email: [gponto@bakerlaw.com](mailto:gponto@bakerlaw.com)  
Marc Skapof  
Email: [mskapof@bakerlaw.com](mailto:mskapof@bakerlaw.com)

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities  
LLC and Bernard L. Madoff*

BLMIS Account Name	BLMIS Account Number
L H RICH COMPANIES	1ZB250

BJ.MIS ACCOUNT NO. 1ZB250 - L H RICH COMPANIES

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
	<u>Transaction</u>	<u>Transaction Amount</u>	<u>Cash</u>	<u>Cash</u>	<u>Transfers of</u>	<u>Transfers of</u>	<u>Balance of</u>	<u>90-Day</u>	<u>2-Year</u>	<u>6-Year</u>
<u>Date</u>	<u>Description</u>	<u>Reported in</u>	<u>Deposits</u>	<u>Withdrawals</u>	<u>Principal In</u>	<u>Principal Out</u>	<u>Principal</u>	<u>Preferential</u>	<u>Fraudulent</u>	<u>Fraudulent</u>
		<u>Customer Statement</u>						<u>Transfers</u>	<u>Transfers</u>	<u>Conveyances</u>
4/6/1995	CHECK WIRE	1,000,000	1,000,000	-	-	-	1,000,000	-	-	-
6/2/1997	CHECK WIRE	(500,000)	(500,000)	-	-	-	1,500,000	-	-	-
7/3/2000	CHECK	(250,000)	-	(250,000)	-	-	1,250,000	-	-	-
12/31/2004	CHECK WIRE	(500,000)	-	(500,000)	-	-	750,000	-	-	-
8/31/2005	CHECK WIRE	(1,000,000)	-	(1,000,000)	-	-	(250,000)	-	-	(250,000)
1/31/2006	CHECK WIRE	(2,000,000)	-	(2,000,000)	-	-	(2,250,000)	-	-	(2,000,000)
3/18/2008	CHECK WIRE	(1,800,000)	-	(1,800,000)	-	-	(4,050,000)	-	(1,800,000)	(1,800,000)
	Total:		\$ 1,500,000	\$ (5,550,000)	\$ -	\$ -	\$ (4,050,000)	\$ -	\$ (1,800,000)	\$ (4,050,000)

**Baker & Hostetler LLP**

45 Rockefeller Plaza

New York, NY 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

David J. Sheehan

Marc E. Hirschfield

Richard J. Bernard

Geraldine E. Ponto

Marc Skapof

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

L. H. RICH COMPANIES, N. R. INVESTMENT  
ASSOCIATES, M. R. INVESTMENT  
ASSOCIATES, JACK POLACK, and JAMES  
POLACK,

Defendants.

Adv. Pro. No. 10-05371 (BRL)

**NOTICE OF APPLICABILITY OF THE ORDER APPROVING  
LITIGATION CASE MANAGEMENT PROCEDURES FOR AVOIDANCE ACTIONS**

PLEASE TAKE NOTICE, that the Order Approving Litigation Case Management Procedures for Avoidance Actions entered by the Bankruptcy Court in the above captioned SIPA liquidation, Adv. Pro. No. 08-01789 (BRL), on November 10, 2010 is hereby made applicable to and governs this adversary proceeding.

Date: November 12, 2010  
New York, New York

Of Counsel:

**BAKER & HOSTETLER LLP**  
200 South Orange Avenue  
SunTrust Center, Suite 2300  
Orlando, Florida 32801  
Telephone: (407) 649-4000  
Facsimile: (407) 841-0168  
Matthew P. Julian  
Email: [mjulian@bakerlaw.com](mailto:mjulian@bakerlaw.com)

By: /s/ Marc E. Hirschfield  
/s/ Richard J. Bernard  
/s/ Geraldine E. Ponto  
/s/ Marc Skapof

**BAKER & HOSTETLER LLP**  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)  
Marc E. Hirschfield  
Email: [mhirschfield@bakerlaw.com](mailto:mhirschfield@bakerlaw.com)  
Richard J. Bernard  
Email: [rbernard@bakerlaw.com](mailto:rbernard@bakerlaw.com)  
Geraldine E. Ponto  
Email: [gponto@bakerlaw.com](mailto:gponto@bakerlaw.com)  
Marc Skapof  
Email: [mskapof@bakerlaw.com](mailto:mskapof@bakerlaw.com)

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities  
LLC and Bernard L. Madoff*

Baker Hostetler

December 20, 2010

M. R. INVESTMENT ASSOCIATES  
1515 FIFTH AVE SUITE 104  
MOLINE IL 61265

**From: Counsel for Irving Picard, Trustee, BLMIS Liquidation**

**Re: Bernard L. Madoff Investment Securities LLC (BLMIS)  
Bankr. S.D.N.Y., No. 08-01789 (BRL)**

Our records indicate that you are among the Bernard L. Madoff Investment Securities LLC ("BLMIS") customers who received more money from BLMIS than they deposited.

The Court-appointed Trustee for the liquidation of BLMIS, Irving Picard, through his counsel, Baker & Hostetler LLP, is commencing litigation to recover these excess amounts, which were transferred by BLMIS to customers like you during the six years prior to December 11, 2008. Because there was virtually no trading or purchases of securities by BLMIS for the customer accounts, the amounts withdrawn in excess of deposits were, in fact, funds deposited by other BLMIS customers. When recovered, these funds will be added directly to the Customer Fund, which has been assembled for the benefit of defrauded BLMIS customers with allowed claims.

Therefore, as part of these ongoing recovery efforts, we are serving you with a legal complaint, called an "Avoidance Action" lawsuit. The law requires that such complaints be filed on or before the second anniversary of the commencement of the BLMIS liquidation proceeding.

For step-by-step instructions on how to respond to the complaint, please review the Litigation Case Management Procedures for Avoidance Actions, a copy of which is enclosed. It is also available on the Trustee's website at [www.madofftrustee.com](http://www.madofftrustee.com). These steps are designed to facilitate the evaluation and administration of your case and encourage resolution through discussion, negotiation and mediation, instead of litigation. We expect that many of you will consult with legal counsel, but the Procedures do allow you to appear on your own, without an attorney, or through a representative other than a lawyer.

**As the Trustee has stated on numerous occasions, his goal remains to negotiate, not litigate.** If at all possible, the Trustee wants to resolve this matter with you out of court, in a way that is appropriate for your personal financial situation. If you work within the established framework and resolution is agreed upon, the Trustee will dismiss the suit against you.

**We urge you to respond promptly. If the procedures for responding to the complaint are not followed, the Avoidance Action lawsuit will move forward.** If you take no action and do not respond to the complaint, the Bankruptcy Court could enter a default judgment against you. A default judgment would be made with no input from you regarding your personal situation and no recognition of your current financial circumstances. If the Trustee does not hear from you, a default judgment is his only option.

If, on the other hand, you contact the Trustee, he will consider your circumstances, financial and otherwise, when determining whether to continue the lawsuit. The Trustee realizes that some of the persons sued may not be able to return, without undue hardship, all or even a portion of the excess funds which they received from BLMIS. **To address these situations, the Trustee is continuing the BLMIS Hardship Program to include complaint recipients who are currently experiencing financial hardship or who may be placed in a hardship position as a result of an Avoidance Action.** If you believe that you qualify for the Hardship Program, it is imperative that you review the steps – posted on [www.madofftrustee.com](http://www.madofftrustee.com) – and apply promptly for relief. Please call 1-800-735-3428 to reach assistance through the Hardship Program Hotline or email [hardshipprogram@bakerlaw.com](mailto:hardshipprogram@bakerlaw.com) with any questions you may have.

We have also provided an executive summary of the Avoidance Action Procedures to highlight key points and deadlines. If you have further questions or need assistance after reviewing the procedures below, please call 1-800-735-3428 to reach the Avoidance Action Help Line from 8 a.m. to 10 p.m. EST Mondays through Fridays and 10 a.m. to 6 p.m. EST on Saturdays.

#### **Summary: BLMIS Avoidance Action Procedures**

##### **Responding to the complaint:**

1. You must respond to the complaint within 60 days from the date of the summons. Upon request, the Trustee may grant you extensions of time to respond.
2. If you agree to enter mediation, you will not need to respond to the complaint while mediation is ongoing. A motion to dismiss the Avoidance Action will be referred to mediation, unless you and the Trustee concurrently ask for an immediate court date.
3. Once one of the actions outlined in steps one or two has been taken, an initial case conference – either in person or by telephone – with representative(s) of the Trustee will be scheduled.
4. If you believe that you qualify for the Hardship Program, you should still respond to the Trustee promptly, within the deadlines outlined above. Again, please review the enclosed materials and call the Hardship Program Hotline at 1-800-735-3428 with



questions about eligibility for the Program or visit the Trustee's website at [www.madofftrustee.com](http://www.madofftrustee.com) where forms and further information are available.

**Mediation:**

1. If the Trustee does not dismiss the complaint against you, or you and the Trustee are unable to reach a mutually agreeable settlement promptly, the Trustee will make every effort to resolve the lawsuit through mediation instead of in Court.
2. The Avoidance Actions will be referred to mandatory mediation, either before or after responding to the complaint. Complaint recipients and the Trustee will be able to choose a mediator from a list of mediators maintained by the Bankruptcy Court.
3. Position statements (no more than 20 double-spaced pages in 12-point type, exclusive of exhibits and schedules) must be submitted 10 days prior to mediation.
4. Mediations must be concluded within 120 days of mediator selection.
5. Mediator fees and expenses in matters involving less than \$20 million will be paid by the Trustee.

**Bankruptcy Court Pleadings and Related Discovery:**

1. If you do not believe the complaint against you can be resolved through mediation, you should refer to Bankruptcy Court Superseding General Order M-399 (available on the Bankruptcy Court's website located at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) or on the Trustee's website ([www.madofftrustee.com](http://www.madofftrustee.com)) for instructions on filing of pleadings.
2. If you wish to act for yourself or through a representative other than a lawyer, you should carefully review the procedures in General Order M-399 regarding court appearances and the ability to file pleadings via email or, if unable to file electronically, through notification of actions and submission of materials via U.S. Mail.
3. Unless otherwise agreed by the parties, discovery requests – whether by you or your attorney – must be made within 60 days of the initial case conference or within 180 days of the initial complaint filing, whichever is later.
4. Unless otherwise agreed by the parties, all discovery should be completed within 210 days of the initial case conference, absent an order of the Court showing good cause for further extension or a separate agreement with the Trustee regarding discovery.
5. Given the anticipated volume of discovery requests, the Trustee reserves the right to produce summary reports or provide electronic or other access to underlying documentation to you and/or your attorney. (Access to materials containing non-public personal and financial information will be limited to complaint recipients and their legal counsel.)
6. Parties seeking depositions or interrogatories should consult the detailed Avoidance Action Procedures ([www.madofftrustee.com](http://www.madofftrustee.com)) for limits on availability of the

Trustee's financial professionals and on the length of interrogatories. Limits and deadlines for outside expert testimony are also available on the Trustee's website.

**This brief summary is meant to highlight key steps and deadlines and is not intended to be comprehensive or to answer every question. Whether you have an attorney or are representing yourself, we urge you to consult the enclosed detailed Litigation Case Management Procedures for Avoidance Actions, which are also available on the Trustee's website.**

The Trustee and his team hope to hear from you promptly. We want to work with you to reach a mutually acceptable resolution.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**ORDER (1) ESTABLISHING LITIGATION CASE MANAGEMENT  
PROCEDURES FOR AVOIDANCE ACTIONS AND (2) AMENDING THE  
FEBRUARY 16, 2010 PROTECTIVE ORDER**

Upon the motion (the "Motion")<sup>1</sup> of Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* ("SIPA"),<sup>2</sup> and the substantively consolidated estate of Bernard L. Madoff ("Madoff"), seeking entry of an order, (1) pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and Rules 7016, 7026 and 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), establishing Avoidance Procedures (as defined below) governing the litigation of certain avoidance actions to be commenced by the Trustee, and (2)

<sup>1</sup> All terms not defined herein shall have such meanings as subscribed to them in the Motion.

<sup>2</sup> For convenience, future reference to SIPA will not include "15 U.S.C."

amending the Protective Order (the "Global Protective Order") [Docket No. 1951] entered by this Court on February 16, 2010 in order to facilitate the implementation of the Avoidance Procedures; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with section 78eee(b)(4) of SIPA, the Protective Decree, entered on December 15, 2008 by the United States District Court for the Southern District of New York in Case No. 08 CV 10791, and 28 U.S.C. §§ 157 and 1334; and it appearing that the relief requested in the Motion is in the best interests of the estate and its customers; and due notice of the Motion having been given, and it appearing that no other or further notice need be given; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon the proceedings before the Court and after due deliberation, it is hereby

**ORDERED**, that the relief requested in the Motion is granted; and it is further

**ORDERED**, that the procedures set forth on Exhibit A hereto (the "Avoidance Procedures") are adopted and shall govern avoidance actions where a Notice of Applicability (as defined in the Avoidance Procedures) is filed ("Avoidance Actions"); and it is further

**ORDERED**, that the Global Protective Order is amended as follows:

- A. To the extent a complaint (including exhibits) or other filings in any adversary proceeding related to this action contains Confidential Information or Confidential Account Material (each as defined in the Global Protective Order) which the Trustee obtained from the records and files of BLMIS, the Trustee shall be permitted, to the extent consistent with applicable law, to file publicly such complaints (including exhibits) and other filings. To the extent that such a complaint (including exhibits) or other filings in any adversary proceeding related to this action contains Confidential Information or Confidential Account Material obtained from a party other than BLMIS and such Confidential Information or Confidential Account Material was not in the records and files of BLMIS, the Trustee may give the defendant written notice of his intent to include such information in the complaint or other pleading and the defendant shall then have five days to notify the Trustee in writing of its objection to

the public filing of such complaint or other filing. The defendant's failure to so notify the Trustee within such five day period shall be deemed the defendant's consent to the public filing of such complaint (with exhibits) or other filing. If (i) the defendant notifies the Trustee of its objection to the public filing of the complaint (with exhibits) or other filing within such five day period or (ii) if the Trustee wishes to file the complaint (with exhibits) or other filing without giving the defendant prior notice or if notice has been given to defendant, before the expiration of the five-day objection period, the Trustee is hereby authorized without further Court order to file the complaint (with exhibits) or other filing under seal and/or publicly in redacted form, in each case, subject to the right of the Trustee or other parties-in-interest to subsequently move to have the complaint (and exhibits) and/or other filing unsealed or filed in unredacted form, as the case may be, and the right of the defendant to oppose any such motion.

- B. Confidential Account Material (as defined in the Global Protective Order) relied upon by the Trustee's experts in forming their expert opinions and preparing their expert reports shall be designated "Professionals' Eyes Only". The Trustee may provide access to such Confidential Account Material to attorneys of record in one or more Avoidance Actions and other professionals working with that attorney on such Avoidance Action(s) provided that the attorney and/or professional executes a non-disclosure agreement substantially in the form annexed to the Avoidance Procedures as Exhibit 3; and it is further

**ORDERED**, that a violation of a party's obligations under a Non-Disclosure Agreement shall be treated as a violation of this Order and shall subject such party to such sanctions as the Court shall determine after notice and a hearing; and it is further

**ORDERED**, that this Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: New York, New York  
November 10, 2010

/s/Burton R. Lifland  
HONORABLE BURTON R. LIFLAND  
UNITED STATES BANKRUPTCY JUDGE

## **EXHIBIT A**

**The Avoidance Procedures**

**1. Notice of Applicability:**

- A. The Avoidance Procedures apply only to Avoidance Actions commenced by the Trustee after the approval of these Avoidance Procedures in which (a) the amount demanded in the complaint commencing the Avoidance Action (the "Complaint") is \$20 million or less and (b) the Trustee or the defendant files in such adversary proceeding a "Notice of Applicability" of these Avoidance Procedures (the form of which is annexed hereto as Exhibit 1). The Trustee or defendant may also file a Notice of Applicability in Adv. Pro. Nos. 10-3222 and 10-3223 pending in this Court (the "Bankruptcy Court"), in which case, the Avoidance Procedures will become applicable to such Avoidance Actions prospectively without extending any dates or deadlines that expired prior to the date such Notice of Applicability is filed. A Notice of Applicability may also be filed in Avoidance Actions where the amount demanded in the Complaint is more than \$20 million by mutual consent of the Trustee and the defendant(s) in such Avoidance Action. For purposes of these Avoidance Procedures, "Avoidance Actions" shall mean adversary proceedings commenced by the Trustee seeking the avoidance and recovery of preferences or fictitious profits (but not principal) under sections 78fff(b), 78fff-1(a) and 78fff-2(c)(3) of SIPA, sections 541, 542, 544, 547, 548, 550 and 551 of the Bankruptcy Code, sections 273 to 279 of New York Debtor and Creditor Law, and other applicable law.

**2. Response:**

- A. Except as provided below, the defendant(s) shall file and serve an answer or response to the Complaint within 60 days from the date of the issuance of the summons (the "Response Due Date"). Where a defendant is located in a country outside the United States, the time allotted for the Trustee to serve the summons shall be the date that is 120 days after the date of the issuance of the summons and the Response Due Date for such defendant shall be 180 days after the date of the issuance of the summons.
- B. No initial pre-trial conference pursuant to Bankruptcy Rule 7016 will be held in the Avoidance Actions and, accordingly, the summons filed and served by the Trustee will not include a date for a pre-trial conference.
- C. Upon request by a defendant, the Trustee may agree to one or more extensions of the Response Due Date with the extension(s) totaling no more than 90 days without further Court order. A "Notice of Extended Response Due Date" shall be filed in the adversary proceeding by the Trustee memorializing such agreement (whereupon, thereafter, the Response Due Date shall be the date set forth in the Notice).

- D. If a defendant files a motion under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim (a "Dismissal Motion"), made applicable by Bankruptcy Rule 7012, in response to the Complaint, the issues raised in such motion, together with the issues raised in the Complaint, are immediately referred to mediation; provided, however, that if the parties mutually agree that mediation is unlikely to resolve the issues raised by any such Dismissal Motion, that motion will not be referred to mediation and, instead, the parties will jointly request in a letter to the Court that the Court hear the Dismissal Motion on such schedule as the Court may determine. If a party brings any dismissal motion other than a motion under Federal Rule of Civil Procedure 12(b)(6), the Court will hear the matter on such schedule as the Court may determine.
- E. If the parties jointly agree in writing (which agreement the Trustee will file in the adversary proceeding) to enter mediation prior to the Response Due Date, the Response Due Date shall be deferred while the mediation is pending. If the mediation does not resolve the Avoidance Action, the Response Due Date shall be the date that is 30 days following the completion of the mediation. A "Notice of Extended Response Due Date" shall be filed in the adversary proceeding by the Trustee upon the termination of mediation setting forth the new Response Due Date (whereupon, thereafter, the Response Due Date shall be the date set forth in the Notice of Extended Response Due Date).
- F. Except as set forth above, further extensions of the Response Due Date shall not be granted except on motion upon a showing of good cause or by stipulation of the parties.
- G. Within 30 days after a defendant or, if more than one, the last defendant, files an answer to the Complaint, the parties shall meet, either in person or by teleconference, and confer on a mediation, discovery and litigation plan (the "Initial Case Conference"). The parties may agree to alter the deadlines set forth below upon mutual consent. Following the Initial Case Conference, the Trustee shall file with the Court a case management notice (the "Case Management Notice") (substantially in the form annexed hereto as Exhibit 2) which sets forth the various deadlines that will apply to the proceeding. The parties, upon mutual consent, may agree to alter the dates set forth in the Case Management Notice. Any such modifications shall be the subject of an amended case management notice (the "Amended Case Management Notice") which the Trustee shall file with the Court in the adversary proceeding.

3. **Filing and Service of Pleadings:**

- A. All pleadings shall be electronically filed with the Court in accordance with Superseding General Order M-399 which is available on the Bankruptcy Court's website: ([www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)). A copy of such



order is also available on the Trustee's website:  
[(www.madofftrustee.com/\_\_\_\_)]<sup>1</sup>

- B. The Complaint and the summons must be served in accordance with the Bankruptcy Rules, unless the parties agree otherwise. If a defendant is known by the Trustee to be represented by counsel, the Trustee shall concurrently send to such counsel a courtesy copy of the summons and Complaint; provided, however, that the failure by the Trustee to provide such a courtesy copy shall not be deemed to constitute ineffective service of process if proper service was effected on the defendant in accordance with the Bankruptcy Rules. After a defendant has appeared, service of all pleadings in each Avoidance Action shall be made by email (i) to counsel of record or (ii) on the defendant if proceeding *pro se*. Except as set forth below with respect to *pro se* litigants, there shall be no obligation to serve paper copies of pleadings other than the Complaint and the summons.
- C. Parties subject to these Avoidance Procedures who file a pleading with the Bankruptcy Court are not required to serve the Trustee with such pleading and the Trustee will be deemed to have received notice of and been served with such filing via the Court's ECF notification. If a defendant is appearing *pro se* and is not able to electronically file a pleading with the Bankruptcy Court, that defendant shall so notify the Trustee in writing (Baker & Hostetler LLP, Attention: Marc Hirschfield, 45 Rockefeller Plaza, New York, NY 10111) and may thereafter serve the Trustee via United States Mail.
- D. Parties subject to these Avoidance Procedures who wish to serve the Trustee with a document not filed with the Bankruptcy Court (such as, for example, discovery requests) shall email such document to Trustee@MadoffLitigation.com and include the adversary proceeding number in the subject line of the email. Compliance with the foregoing shall be deemed effective service on the Trustee. If a defendant is appearing *pro se* and is not able to serve documents by email, that defendant shall so notify the Trustee in writing (Baker & Hostetler LLP, Attention: Marc Hirschfield, 45 Rockefeller Plaza, New York, NY 10111) and may thereafter serve the Trustee via United States Mail.
- E. Each defendant shall file a notice with the Court, on or before the Response Due Date, specifying the email address(es) for service of pleadings and documents on it. If a defendant is appearing *pro se* and is not able to receive pleadings and documents by email, that defendant shall so notify the Trustee in writing (Baker & Hostetler LLP, Attention: Marc Hirschfield, 45 Rockefeller Plaza, New York, NY 10111) and the Trustee

---

<sup>1</sup> The actual jump cites to the Trustee's website will be provided at the time the Avoidance Procedures become effective.

shall thereafter serve such *pro se* defendant via United States Mail at such address as the defendant shall request.

- F. All parties must send a courtesy copy, in paper form, of each motion, pleading or other filing to Judge Lifland at the following address: The Hon. Burton R. Lifland, United States Bankruptcy Court, One Bowling Green, New York, NY 10004-1408. The parties shall not, however, send to Chambers copies of discovery requests other than as a part of, and in connection with, a discovery motion.

4. **Discovery:**

- A. The discovery provisions of the Federal Rules of Bankruptcy Procedure and this Court's Local Bankruptcy Rules shall govern the discovery to be conducted in the Avoidance Actions, unless otherwise provided herein.
- B. Unless the parties agree to a different date, the initial disclosures provided by Rule 26(a)(1) of the Federal Rules of Civil Procedure (the "Federal Rules") shall be made within the later of (i) 60 days from the date of the Initial Case Conference or (ii) 180 days from the date the Complaint was filed (the "Initial Disclosure Date"). The parties shall have a continuing obligation to disclose discoverable information as well as to supplement all existing disclosures in accordance with Federal Rule 26(e)(1).
- C. The Trustee or a defendant may produce discovery, including initial disclosures, on a CD-ROM, in an electronic data room, or other similar electronic format. Given the volume of documentation that may be subject to disclosure in this matter, the Trustee or a defendant may produce a summary report, such as an expert report, and provide access to the underlying documentation on which the summary report relies in an electronic data room or other medium for review by the defendants. With regard to documents produced or made available electronically:
1. Information and documents disclosed shall be text searchable;
  2. Upon request, the Trustee or a defendant, as the case may be, shall provide data and image load files necessary to review documents on search platforms (i.e., Summation, Concordance, Relativity);
  3. The Trustee and defendant(s) shall produce any system-created or non-privileged captured objective metadata, such as date fields, author fields, custodian fields, path to native file, etc.;

4. To the extent that documents are organized by date, custodian, or subject matter, either because they were so maintained or because the Trustee so organized them, the Trustee shall produce such documents as organized; and
  5. Nothing herein shall preclude the parties from requesting additional formats of production, metadata, or native documents.
- D. Notwithstanding the Global Protective Order dated February 16, 2010 [Docket No. 1951] (the "Global Protective Order"), materials containing non-public personal information and/or sensitive financial information, including, Confidential Account Material (as defined in the Global Protective Order) may be designated by the Trustee as "Professionals' Eyes Only." The Trustee will provide access to such Confidential Account Materials only to attorneys of record in one or more Avoidance Actions and other professionals working with that attorney on such Avoidance Action(s) provided that the attorney and/or the other professional executes a non-disclosure agreement in substantially the form attached hereto as Exhibit 3 (the "Non-Disclosure Agreement"). Copies of the Global Protective Order and Non-Disclosure Agreement are available on the Trustee's website: [(www.madofftrustee.com/\_\_\_\_\_)] Nothing herein or in the Global Protective Order shall prevent any defendant from sharing Confidential Account Material pertaining to that defendant with other defendants in other Avoidance Actions, with accountants, financial or other consultants, or as deemed appropriate by the defendant to whom the Confidential Account Material relates.
- E. In the event of a discovery dispute between the parties, the parties shall meet and confer in an attempt to resolve the dispute. If not resolved, the parties shall comply with Local Bankruptcy Rule 7007-1 with respect to resolution of the dispute.
- F. Unless the parties agree to a different schedule, all fact discovery in an Avoidance Action shall be completed within 210 days after the Initial Disclosure Date. No further fact discovery shall be conducted after that date absent order of the Court upon a showing of good cause.
- G. Unless the parties agree to a broader scope, absent further order of the Court upon a showing of good cause, discovery will be limited solely and specifically to nonprivileged matters to the extent discoverable under Federal Rule 26(b)(1) which relate to: (a) the calculation of net equity for the defendant's BLMIS account; (b) the financial condition of BLMIS; (c) the activities of BLMIS, including both fraudulent conduct, including the Ponzi scheme, and legitimate operations; (d) the defendant's account documents and customer correspondence and interactions with BLMIS, its employees, agents and other investors or customers; (e) the internal

records of BLMIS; (f) transfers of money by and among BLMIS; (g) the defendant's good faith or lack thereof, including issues related to the defendant's actual or constructive notice of fraudulent activity by BLMIS or anyone acting on its behalf; (h) disclosures made by BLMIS under federal and/or state laws, such as disclosures to the SEC; and (i) the identity of other persons or entities that may be liable for the transfers at issue, whether as subsequent transferees or for some other reason.

- H. The parties may take depositions of fact witnesses during the period for fact discovery after initial disclosures have been made. The Trustee shall make his financial professionals submitting expert evidence on behalf of the Trustee available for depositions and may coordinate such depositions in multiple Avoidance Actions to maximize efficiency and use of resources. The Trustee shall notify all interested parties of the proposed date, time and location of any such depositions to be coordinated in multiple Avoidance Actions. To the extent a deposition is so coordinated, the limitations set forth in Federal Rule 30(d)(1) shall not apply, and the parties shall agree on an appropriate duration for the deposition. Depositions of the Trustee are prohibited absent an order issued by this Court upon a showing of good cause.
- I. Notwithstanding Local Bankruptcy Rule 7033-1(b), the parties are permitted to serve substantive interrogatories at any time prior to the date which is 90 days prior to the completion of fact discovery. Unless the parties otherwise agree or the Court otherwise orders upon a showing of good cause, each party will be limited to propounding no more than 25 interrogatories (inclusive of subparts).
- J. Unless the parties agree otherwise, Federal Rule 26(a)(2) disclosures of the experts on any issue a party must prove in connection with a claim or defense shall be made within 60 days after the deadline for completion of fact discovery.
- K. Unless the parties agree otherwise, Federal Rule 26(a)(2) disclosures of the parties' rebuttal experts, if any, shall be made within 90 days after the deadline for completion of fact discovery or 30 days after receipt of the other party's corresponding expert report, whichever is later.
- L. Unless the parties agree otherwise, all expert discovery shall be concluded within 180 days after the deadline for completion of fact discovery.
- M. To the extent that the Trustee proffers an expert witness on an issue that is common to more than one Avoidance Action, the Trustee may coordinate such deposition in multiple Avoidance Actions to maximize efficiency and use of resources. The Trustee shall notify all interested parties of the proposed date, time and location of any such depositions to be coordinated in multiple Avoidance Actions. To the extent a deposition is so

coordinated, the limitations set forth in Federal Rule 30(d)(1) shall not apply, and the parties shall agree on an appropriate duration for the deposition. Depositions of the Trustee are prohibited absent an order issued by this Court upon a showing of good cause.

- N. All depositions of the Trustee's fact and expert witnesses shall occur at the offices of Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, NY 10111, or such other location as the Trustee may agree. Depositions of other parties' expert and fact witnesses shall occur at such place as the parties shall mutually agree.
- O. Any party seeking to make a discovery-related motion shall comply with Local Bankruptcy Rule 7007-1.
- P. Except as specifically set forth in these Avoidance Procedures, the Global Protective Order shall apply to all discovery in the Adversary Proceedings. Notwithstanding the applicability of the Global Protective Order, nothing therein or herein shall prevent any defendant from sharing Confidential Information with codefendants or defendants named in other Avoidance Actions, or with accounting, financial, or other consultants retained in the litigation, provided that such persons have executed the Non-Disclosure Agreement. A copy of the Global Protective Order is available on the Trustee's website: [(www.madofftrustee.com/\_\_\_\_\_)].

5. **Mediation Procedures:**

- A. All of the Avoidance Actions are referred to mandatory mediation. Except as set forth above or unless the parties opt for mediation at an earlier stage of the litigation, each Avoidance Action shall be referred to mediation upon the completion of discovery. The Trustee shall file in the adversary proceeding a notice of mediation referral (the "Notice of Mediation Referral") at the time the litigation is being referred to mediation.
- B. Except as is set forth herein, the mediation shall be conducted in accordance with General Order M-390 (the "Mediation Order") which is available on the Bankruptcy Court's website: (www.nysb.uscourts.gov). A copy of such order is also available on the Trustee's website: [(www.madofftrustee.com/\_\_\_\_\_)].
- C. Within 14 calendar days after the filing of the Notice of Mediation Referral, the Trustee and defendant(s) shall choose a mediator in accordance with the Mediation Order. If the parties are unable to agree on a mediator, the Court shall appoint one in accordance with the Mediation Order.

- D. Promptly after the filing of the Notice of Mediator Selection, the Trustee and defendant's counsel (or the defendant if appearing *pro se*) shall jointly contact the selected Mediator to discuss the mediation.
- E. The parties shall exchange position statements, which may not exceed twenty pages double-spaced in 12 point type (exclusive of exhibits and schedules), at least 10 days prior to the scheduled mediation. The Mediator may also require the parties to provide to the Mediator any relevant papers and exhibits, and a settlement proposal.
- F. All mediations must be concluded within 120 days of the date of the Notice of Mediator Selection, which deadline may be extended by the mutual consent of the parties to the mediation and the Mediator.
- G. The parties shall participate in the mediation in good faith and with a view toward reaching a consensual resolution. The mediation(s) shall be attended by a representative for each of the parties with full settlement authority and, if a defendant is represented, their counsel, as well as counsel for the Trustee (who shall have settlement authority). Any defendant shall be able to participate in the mediation telephonically and if a defendant is unable to attend the mediation in person or telephonically because of advanced age or poor health, the mediation may be attended by the defendant's counsel only, provided that he or she has settlement authority.
- H. In mediations where the allegedly fraudulent transfers or preferences sought in the Complaint total \$20 million or less, the Trustee shall pay the reasonable fees and reasonable expenses of the Mediator. Fees and expenses in all other mediations will be apportioned as set forth in the Mediation Order, unless otherwise agreed by the parties.
- I. No Mediator shall mediate a case in which he/she or his/her law firm currently represents a party with respect to the BLMIS proceeding without the prior written consent of all parties to the mediation. Prior to accepting an Avoidance Action for mediation, the Mediator shall disclose to the Trustee and the defendant(s) any such representations. If a Mediator's law firm represents any defendant in the Avoidance Actions or other avoidance actions brought by the Trustee, then (a) the Mediator shall not personally participate in the representation of that defendant and (b) the Mediator's law firm shall impose an ethical wall which ensures that the Mediator will not have access to the defendant's file and/or communicate about the defendant's case or the mediation with anyone working on the defendant's case. The Mediator's participation in mediation pursuant to the Avoidance Procedures shall not create a conflict of interest with respect to the representation of such defendant by the Mediator's law firm.

6. **Motion Practice:**

- A. Prior to the close of discovery, no motions may be made without the Court's prior approval, which may be sought, on notice to other parties to the action, by letter to the Court; provided, however, that (i) motions to dismiss, motions for withdrawal of the reference, and motions for default judgment may be made without the Court's prior approval, and (ii) routine procedural motions (e.g., motions to intervene or to amend a pleading) may be made without the Court's prior approval only if the moving party obtains the consent of all other parties to the action. Notwithstanding anything contained herein to the contrary, a letter request for a pre-motion conference with the Court shall be sufficient to be deemed compliant with the requisite time period for the motion or answer.
- B. Any party seeking to file a summary judgment motion shall comply with Local Bankruptcy Rule 7056-1.
- C. All matters concerning any Avoidance Action shall, barring exigent circumstances, only be heard on an omnibus hearing date before the Honorable Burton R. Lifland (collectively, the "Avoidance Action Omnibus Hearings"). The initial Avoidance Actions Omnibus Hearings shall be held on January 26, 2011, February 16, 2011, March 23, 2011, April 27, 2011, May 25, 2011 and June 29, 2011. Thereafter, Avoidance Actions Omnibus Hearings shall be scheduled approximately every thirty (30) days at the convenience of the Court. The Trustee shall file and serve notices of the scheduling of the omnibus hearings in the Avoidance Actions and post the scheduled dates on the Trustee's website [(www.madofftrustee.com/\_\_\_\_\_)]
- D. The Trustee shall file a report in the main SIPA proceeding (Adv. Pro. No. 08-01789) at least one week prior to each Avoidance Action Omnibus Hearing setting forth the status of each of the Avoidance Actions scheduled to be heard at the Avoidance Action Omnibus Hearing. The Trustee shall also deliver a copy of the report to Judge Lifland's Chambers and serve each of the applicable defendants.

7. **Pre-trial Conference / Trial:**

- A. After all discovery has been completed and after the completion of mediation without a settlement, the parties to the Avoidance Action shall so inform the Court at the next scheduled Avoidance Actions Omnibus Hearing. At such time, the Court will address any additional issues, set additional deadlines, if necessary, establish a due date by which the parties must file a joint pre-trial order, and schedule a trial. The parties to an Avoidance Action in which discovery has been completed need not await the completion of discovery in all Avoidance Actions before scheduling trial.

8. **Miscellaneous:**

- A. These Avoidance Procedures shall control with respect to the Avoidance Actions to the extent of any conflict with other applicable rules and orders.
- B. Nothing herein shall prevent the Trustee or any defendant in an Avoidance Action from seeking relief from the provisions of these Avoidance Procedures, upon a showing of good cause, by appropriate application to the Court in accordance with the procedures set forth herein.
- C. Nothing herein shall prevent the parties to any Avoidance Action from voluntarily exchanging information or engaging in settlement discussions at any time; provided, however, that any such voluntary exchange of information shall in no way be construed as a waiver of any of the requirements or limitations contained in these Avoidance Procedures.
- D. Noncompliance with the Avoidance Procedures may result in such sanctions as the Court deems appropriate on the non-complying party after notice and a hearing.
- E. The Trustee shall serve a copy of the Order approving these Avoidance Procedures on each defendant in the Avoidance Action at the time he serves the summons and Complaint.
- F. The Trustee shall post and maintain a copy of these Avoidance Procedures (together with any amendments or modifications thereto) on his website: [(www.madofftrustee.com/\_\_\_\_\_)].



## **EXHIBIT 1**

**BAKER & HOSTETLER LLP**

45 Rockefeller Plaza

New York, NY 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

David J. Sheehan

Marc E. Hirschfield

Richard J. Bernard

Elyssa S. Kates

*Attorneys for Irving H. Picard, Esq., Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
Bernard L. Madoff*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

Defendant(s).

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-\_\_\_\_\_ (BRL)

**NOTICE OF APPLICABILITY OF THE ORDER APPROVING  
LITIGATION CASE MANAGEMENT PROCEDURES FOR AVOIDANCE ACTIONS**

PLEASE TAKE NOTICE, that the Order Approving Litigation Case Management Procedures for Avoidance Actions entered by the Bankruptcy Court in the above captioned SIPA liquidation, Adv. Pro. No. 08-01789 (BRL), on November 4, 2010 is hereby made applicable to and governs this adversary proceeding.

Dated: New York, New York  
November \_\_, 2010

BAKER & HOSTETLER LLP

By: \_\_\_\_\_

David J. Sheehan  
Marc E. Hirschfield  
Richard J. Bernard  
Elyssa S. Kates

45 Rockefeller Plaza  
New York, NY 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201

*Attorneys for Irving H. Picard, Esq., Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and Bernard L. Madoff*

## **EXHIBIT 2**

**BAKER & HOSTETLER LLP**

45 Rockefeller Plaza

New York, NY 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

David J. Sheehan

Marc E. Hirschfield

Richard J. Bernard

Elyssa S. Kates

*Attorneys for Irving H. Picard, Esq., Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
Bernard L. Madoff*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

Defendant(s).

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-\_\_\_\_\_ (BRL)

**CASE MANAGEMENT NOTICE**

PLEASE TAKE NOTICE, that pursuant to the Order Approving Litigation Case Management Procedures for Avoidance Actions [Docket No. \_\_\_\_\_] entered by the Bankruptcy Court in the above captioned SIPA liquidation, Adv. Pro. No. 08-01789 (BRL), on \_\_\_\_\_, 2010 the following deadlines are hereby made applicable to this adversary proceeding:

1. The Initial Disclosures shall be due: \_\_\_\_\_ 2011 [Within the later of (i) sixty (60) days of the Initial Case Conference and (ii) one hundred eighty (180) days after the date the Complaint was filed]
2. Fact Discovery shall be completed by: \_\_\_\_\_ 2011 [Must be completed within 210 days after the Initial Case Conference]
3. The Deadline for Service of Substantive Interrogatories shall be: \_\_\_\_\_ 2011 [Ninety (90) days prior the completion of fact discovery]
4. The Disclosure of Case-in-Chief Experts shall be due: \_\_\_\_\_ 2011 [Within sixty (60) days after the deadline for completion of fact discovery]
5. The Disclosure of Rebuttal Experts shall be due: \_\_\_\_\_ 2011 [Within ninety (90) days after the deadline for completion of fact discovery]
6. The Deadline for Completion of Expert Discovery shall be: \_\_\_\_\_ 2011 [Within 180 days after the deadline for completion of fact discovery]
7. The Deadline to Choose a Mediator and File a Notice of Mediator Selection shall be: \_\_\_\_\_ 2011 [Within 14 days after the filing of the Notice of Mediation Referral]
8. The Deadline for Conclusion of Mediation shall be: \_\_\_\_\_ 2011 [Within 120 days of the date of the Notice of Mediator Selection, which deadline may be extended by the mutual consent of the parties to the mediation and the mediator]

Dated: New York, New York  
\_\_\_\_\_, 201\_\_

BAKER & HOSTETLER LLP

By: \_\_\_\_\_

David J. Sheehan

Marc E. Hirschfield

Richard J. Bernard

Elyssa S. Kates

45 Rockefeller Plaza

New York, NY 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

*Attorneys for Irving H. Picard, Esq., Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and Bernard L. Madoff*

095879, 000021, 300099385.1

## **EXHIBIT 3**



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v

BERNARD L. MADOFF INVESTMENT SECURITIES  
LLC,

SIPA LIQUIDATION  
Defendant,

SIPA LIQUIDATION

No. 08-01789 (BRL)

(Substantively Consolidated)

**UNDERTAKING AND CONSENT  
TO BE BOUND**

In re:

BERNARD L. MADOFF,

Debtor.

WHEREAS this non-disclosure agreement (the "agreement") supplements the *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities, LLC, et al.*, Adv. Pro. No. 08-01789 (BRL) Protective Order entered on February 16, 2010 (the "Protective Order").

WHEREAS this agreement shall govern all materials produced in connection with the BLMIS Avoidance Actions, which have been or subsequent hereto shall be designated as containing CONFIDENTIAL material (as defined in the Protective Order).

WHEREAS the parties may designate certain discovery material or testimony of a highly confidential and/or proprietary nature as "CONFIDENTIAL – PROFESSIONALS' EYES ONLY."

All parties in the BLMIS Avoidance Actions, by and through their respective undersigned counsel, hereby agree to the following:

1. My address is \_\_\_\_\_

and the name of my present employer is \_\_\_\_\_

2. I represent as counsel the following party(ies): \_\_\_\_\_

3. I have received a copy of the Protective Order (the "Order") in this action.

4. I have carefully read and understand the provisions of the Order and this agreement and I am authorized to bind \_\_\_\_\_, which agrees to be bound by both the Order and this agreement.

5. Specifically \_\_\_\_\_ agrees that its employees, agents, or staff will not use or disclose any confidential documents nor the information contained therein to any person, including its clients.

6. \_\_\_\_\_ will never use any confidential material, directly or indirectly, for any purpose other than for purpose of this litigation, except as otherwise permitted by the Order or this agreement.

7. Absent further Court order, \_\_\_\_\_ will only use the information in the Avoidance Action for which it is retained.

8. \_\_\_\_\_ will file under seal any pleadings containing confidential information received under the protection of the Order or this agreement.

9. \_\_\_\_\_ understands that its employees, agents and staff are to retain all copies of any of the materials that they receive which have been so designated as confidential in a container, cabinet, drawer, room or other safe place in a manner consistent with the Order and that all copies are to remain in my custody until they have completed their assigned or legal duties.

10. I understand that violation of this agreement is the equivalent of violation of a court order.

11. \_\_\_\_\_ consents to the exercise of personal jurisdiction by this Court in connection with this agreement and its obligations under the Order.

12. I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

BAKER & HOSTETLER LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)  
Marc E. Hirschfield  
Email: [mhirschfield@bakerlaw.com](mailto:mhirschfield@bakerlaw.com)

*Attorneys for Irving H. Picard, Esq., Trustee  
for the Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and Bernard L. Madoff*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**THIRD AMENDED NOTICE OF OMNIBUS  
AVOIDANCE ACTION HEARING DATES**

In accordance with the Court's Order dated November 10, 2010 (the "Order")  
establishing omnibus case management procedures for avoidance actions subject to the Court's  
Order, please take notice that Avoidance Omnibus Hearings (as defined in the Order) shall be  
held on March 29, 2011<sup>1</sup>, April 27, 2011, May 25, 2011, June 29, 2011, July 27, 2011, August

<sup>1</sup> At the direction of the Court, the March 23, 2011 hearing date has been rescheduled to March 29, 2011.

24, 2011, September 27, 2011, October 26, 2011, November 30, 2011 and December 21, 2011 at 10:00 a.m., or as soon thereafter as counsel may be heard, before the Honorable Burton R. Lifland, United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 1004. Thereafter, Avoidance Action Omnibus Hearings shall be scheduled approximately every thirty (30) days at the convenience of the Court and once the hearings are scheduled, the Trustee will file and serve an updated Notice of Omnibus Hearing Dates in accordance with the Order.

Dated: New York, New York  
February 16, 2011

By: /s/ Marc E. Hirschfield  
**BAKER & HOSTETLER LLP**  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: dsheehan@bakerlaw.com  
Marc E. Hirschfield  
Email: mhirschfield@bakerlaw.com  
Geraldine E. Ponto  
Email: gponto@bakerlaw.com  
Marc Skapof  
Email: mskapof@bakerlaw.com

*Attorneys for Irving H. Picard, Esq., Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC  
And Bernard L. Madoff*